NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19956
THIRD DIVISION Docket Number MW-19867

Burl E. Hays, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Elgin, Joliet and Eastern Railway Company,

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned Car Department employes instead of Bridge and Building Department employes to complete the work of removing a portion of and extending the Monorail System in the Car Shop at Joliet, Illinois (System File BJ-22-70/SM-16-70).

(2) Furloughed Carpenter L.P. Martinson be allowed seven (7) days of pay /eight (8) hours each day/ at the carpenter's straight time rate and Welder S. Neri be allowed the difference between what he would have received at the welder's straight time rate and what he was paid at the track laborer's straight time rate for seven (7) days /eight (8) hours each day/ because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: The facts are undisputed in this case. Beginning October 21, 1970, Carrier was engaged in removing a portion of and extending the Monorail System in its Car Shop at Joliet, Illinois. This work was assigned to and being performed by Bridge and Building Gang #1. On October 29, 1970, Carrier assigned B&B Gang #1 to work elsewhere. At the direction of Carrier, two Car Department employes continued the work on the Monorail System to completion.

Petitioner alleges this assignment violated the Agreement on the grounds that this type of work is specifically granted to B&B forces under certain provisions contained in Rule 56 1. Carrier does not disagree with the fact that B&B forces have been utilized on various occasions to perform such work in Carrier's Car Shop when circumstances required their use, but contends that the question of scope rule exclusivity is not governing in this case. Carrier maintains the work involved is properly assignable to Carmen under provisions contained in Classification of Work Rule 127, and that in using Carmen to do the work in question Carrier violated no provisions of the Agreement.

It is well established that all work reserved to a class, unless such work comes within an exception expressly set forth therein, must be assigned to and performed by such class of employes. (Awards 12133 by Sempliner; 7565 by Cluster; 10247 by McDermott; 10828 by Miller, and others.)

However, this issue is not germane to the dispute here. Our question is whether or not this particular type of work was reserved to a class.

In the statement of Position of Employes on page 14 of the Record Petitioner states: "There can be no question but that the Monorail System is a part of the superstructure of the Joliet Car Shop building and, as such, work thereon belongs to Maintenance of Way employes under the applicable provisions of Rule 56. On Page 10 of the Record, Petitioner states: "In essence, the work in question consisted of construction and dismantling work on the Joliet Car Shop building and/or appurtenances thereto and welding work in connection therewith."

On the other hand, in declining this claim in a letter dated February 1, 1971, Carrier's Division Engineer J. R. Boyer stated that the Monorail System "is part of the jigs and fixture system to help in the construction and repair of freight cars." On page 37 of the Record, Carrier states: "the crane monorail system is not an integral part of the building; it is a fixture of "equipment" functioning with and adjustable to various types of car rebuilding programs."

Thus, we get around to this question: Did the Monorail System become a part of the building, or an appurtenance thereto, or was it a fixture used only in the building and repair of freight cars?

In a repair car shop, such as the one involved here, numerous types of tools are used by the employes, such as dies, car horses, roller supports, jigs, conveyers, etc. We understand the Monorail System is used to support reamers and riveters which are used in the fabrication process. It is mounted adjacent and parallel to both sides of Track K6. It is true the upright channel iron members are mounted on the floor and fastened by expansion bolts. It is also bolted to support beams which are attached to the building. But does this, in itself, make the Monorail an appurtenance to or a part of the building? We think not. Because of the different types of cars worked on, the Monorail System must at times be lengthened or shortened. Sometimes it is even moved to another track. It is dismantled, moved and reconstructed at another site. Therefore, it is not a part of the superstructure of the Car Shop.

A superstructure connotes an integral part of a building above the foundation. Even though the Monorail System is above the foundation, it provides no structural support. It is not even a semi-permanent part of the building. The relocation of it can hardly be construed as a "repair to the building." It certainly is not a building in itself. It may or may not constitute a "fixture", but in our judgment it does not meet the specifications of an "appurtenance." An appurtenance must have some supportive or integral relationship to the structure of the building itself. This Monorail System could conceivably be constructed for operation to serve its purposes outside of a building, though this might not be very practical. The point we make

is that, as set forth in Award 19306, the craneways in the instant case are self-supporting, do not contribute to the support of the building structure, and the posts, columns, bolts and brackets installed were to support the craneways only. Thus, since this Monorail System is not an appurtenance to the Car Shop the disputed work is not expressly reserved to the B&B carpenters and welders under the provisions of Rule 56, and the claim should be denied.

The amount of time involved to do the work in question -- whether it required 14 man-days as claimed by Petitioner, or 12 man-hours as claimed by Carrier -- becomes immaterial.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1973.